

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In Re Gildardo Garcia,)	BK No. 18-21793
)	
Debtor.)	Chapter 7
)	
)	Honorable Janet Baer
)	
)	

NOTICE OF MOTION

To: *See Attached Service List attached hereto.*

Please take notice that on November 22, 2019, at 11:00 a.m., I shall appear before the Honorable Judge Janet Baer in Courtroom 240 at the Kane County Courthouse, 100 S. Third Street, Geneva, IL 60134, and then and there present the **Motion of Creditor Galaxy Sites, LLC Requesting Allowance of Chapter 7 Administrative Expense Claim**, a copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

TANNEN LAW GROUP, P.C.

By: /s/ Michael M. Tannen
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on November 5, 2019, he caused true and correct copies of this **Notice Of Motion** and **Motion of Creditor Galaxy Sites, LLC Requesting Allowance of Chapter 7 Administrative Expense Claim** to be filed electronically in the ECF system and service accomplished pursuant to ECF to counsel of record.

/s/ *Michael M. Tannen*

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**MOTION OF CREDITOR GALAXY SITES, LLC REQUESTING ALLOWANCE OF
CHAPTER 7 ADMINISTRATIVE EXPENSE CLAIM**

Galaxy Sites, LLC (“Galaxy Sites”), through its attorney Michael Murphy Tannen of Tannen Law Group, P.C., hereby requests the allowance of a Chapter 7 administrative expense claim in the amount of \$28,889.80 under 11 U.S.C. § 503(b)(1). In support, Galaxy Sites states as follows:

Introduction

1. Debtor's Chapter 13 proceeding was dismissed in February 2018. Galaxy Sites obtained title to the property located at 40 Dennison Drive in Glendale Heights *via* tax deed in approximately April 2018. Debtor then filed a Chapter 11 proceeding in August 2018. Debtor's Chapter 11 was converted to a Chapter 7 proceeding in May 2019. Currently pending is an adversarial proceeding against Galaxy Sites which essentially alleges that the conveyance via tax deed, even though it was not collusive and was in full compliance with state law, was not for reasonably equivalent value.

2. Debtor, who does not own the Dennison Drive Property and is trying to invalidate the tax deed, has lived at the property free of charge for nearly a year and a half.

3. Since Galaxy Sites took legal possession of the Dennison Drive Property on August 1, 2018, it has incurred (and expects to continue to incur) high costs and expenses necessary in preserving the Dennison Drive Property. As will be itemized below, these expenses

come in the form of use and occupancy fees, insurance, and real estate taxes associated with the Dennison Drive Property.

Administrative Expenses For Which Galaxy Sites Seeks Reimbursement

4. Administrative expenses are "the actual, necessary costs and expenses of preserving the estate..." 11 U.S.C. § 503(b)(1). Galaxy Sites' request for allowance of an administrative claim is based upon the following: use and occupancy fees by Debtor of the Dennison Drive Property from August 1, 2018 through present; Debtor's failure to purchase homeowner's insurance on the Dennison Drive Property while residing there after Galaxy Sites took legal possession of it; and Debtor's failure to pay full real estate taxes in 2017.

5. **Use and Occupancy.** Use and occupancy expenses incurred by the Debtor post-petition qualify as administrative expenses. *In re Joseph C. Spiess Co.*, 145 B.R. 597, 603 (Bankr. N.D. Ill. 1992). Like administrative rent claims, use and occupancy rates must be based upon the reasonable rental value of the property regardless of the use made of the property. *In re Xonics, Inc.*, 65 B.R. 69, 73 (Bankr. N.D. Ill. 1986). While the Chapter 11 was pending, Galaxy Sites and counsel for Debtor attempted to work out a use and occupancy agreement, but those discussions never bore fruit. Consequently, Debtor has lived in the Dennison Drive Property free-of-charge since August 2018. Galaxy Sites seeks to recoup administrative use and occupancy fees from Debtor in the amount of \$23,878.68 based on a comparative market analysis prepared in August 2018 regarding the Dennison Drive Property. See Comparative Market Analysis attached as **Exhibit A**. Said analysis indicates a monthly reasonable use and occupancy charge value of the Dennison Drive Property in August 2018 was \$1,705.62. Thus, \$1,705.62 x 14 months (August 2018 - October 2019) = \$23,878.68.

6. **Insurance.** Insurance on a property can be considered an administrative expense. *In re Dena Corp.*, 312 B.R. 162, 172 (Bankr. N.D. Ill. 2004)(Insurance premiums totaling \$2,118.56 kept the property protected, thus benefiting the Debtor's business and qualifying as an administrative expense.) Galaxy Sites insisted that Debtor purchase homeowner's insurance. To the knowledge of Galaxy Sites, Debtor has not. Should Galaxy Sites later decide to purchase its own insurance on the Dennison Drive Property, it will do so. Galaxy Sites would then seek to be reimbursed for this cost to protect the Dennison Drive Property, in which Debtor continues to reside.

7. **Real Estate Taxes.** Administrative expenses include "...the actual, necessary costs and expenses of preserving the estate including any tax incurred by the estate, whether secured or unsecured, including property taxes for which liability is *in rem*, *in personam* or both..." 11 U.S.C. § 503(b)(1)(B)(i). Debtor owned the Dennison Drive Property in 2017, and should be responsible for the real estate taxes associated thereto. However, Galaxy Sites expended \$5,011.12 in real estate taxes on Debtor's behalf for the year 2017. Upon information and belief, Debtor has not paid the 2018 real estate taxes for the Dennison Drive Property either. Galaxy Sites' calculation of the due and owing 2017 real estate tax amount is as follows:

- In 2017, \$7,009.74 in real estate taxes were due by Debtor.
- $\$7,009.74/365 = \19.20 per diem.
- Galaxy Sites paid 261 days worth of real estate taxes for the Dennison Drive Property. Thus $261 \times \$19.20 = \$5,011.12$.

8. **Total Administrative Expenses.** Galaxy Sites' total administrative expense claim may be broken down in the following manner:

\$ 23,878.68 Use and Occupancy
+ \$ 5,011.12 Real Estate Taxes due in 2018, plus additional unpaid real estate taxes.
= \$ 28,889.80 Total, plus insurance if purchased.

9. Therefore, Galaxy Sites requests the allowance of an administrative claim in the amount of \$28,889.80 against Debtor, plus additional costs identified herein.

WHEREFORE, Galaxy Sites, LLC respectfully requests this Court to enter an order that would allow Galaxy Sites, LLC to pursue a Chapter 7 administrative expense claim in the amount of \$28,889.80 against Debtor, plus additional costs identified herein.

Respectfully submitted,

TANNEN LAW GROUP, P.C.

By: /s/ Michael M. Tannen

Attorneys for Galaxy Sites, LLC

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